IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2006

CORAM

THE HONOURABLE MR. JUSTICE F.M. IBRAHIM KALIFULLA

C.M.A.No. 1092 OF 2001

G. Lakshmanan ... Appellant (Petitioner)

Vs.

1. K. Kannan
2. The United India Insurance Co. Ltd.,
38, Anna Salai, Chennai-2. ... Respondents(Respondents)

Civil Miscellaneous Appeal under section 173 of Motor Vehicles Act 1988 filed against the judgment and decree dated 23.1.2001 and made in M.C.O.P.No.2623/98 on the file of the IV Small Cause Court, Chennai/Motor Accident Claims Tribunal, Chennai.

For Appellant : Mr. Surya for M/s Anand & SUrya
For Respondents : Mr. D. Bhaskaran
No.2

J U D G M E N T

The claimant is the appellant. The challenge is to the award of the Motor Accident Claims Tribunal, Chennai dated 23.1.2001 passed in M.C.O.P.No.2623/1998. According to the appellant, on 3.6.1998 at 10.00 a.m., he was driving his autorickshaw bearing Registration No.TN-07-1751 in R.K.Shanmugam Salai from south to north when the ambassador car belonging to the first respondent bearing Registration No.TSB-2140 coming in the opposite direction driven by his driver in a rash and negligent manner hit against the appellant's autorickshaw and in that accident, the appellant sustained grievous injuries. He claimed a compensation of Rs.2 lakhs as against the respondents. The claim was resisted by the second respondent contending that the accident occurred due to the negligence of the appellant and that he did not sustain grievous injuries. Before the Tribunal, the appellant examined himself as P.W.1 and examined the Doctor as P.W.2. Exs.P1 to P6 were marked. On the side of the respondents, none were examined as witnesses and no documents were marked. The appellant in his evidence stated that due to the injuries sustained by him in the accident, he is unable to carry on his avocation. P.W.2 Doctor has stated in his evidence based on Exs.P4 and P5 that the injuries sustained by the appellant on his hip and legs and the shortening of one leg has resulted in 60% disability. The Tribunal granted a sum of Rs.15,000/-

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towards loss of earning after the accident, a sum of Rs.1000/- towards transport expenses, a sum of Rs.2000/- towards extra nourishment, a sum of Rs.5000/- for medical expenses and another sum of Rs.5000/- for pain and suffering. For disablement and loss of future earnings, the Tribunal granted a sum of Rs.60,000/- and Rs.10,000/- respectively. In all, a sum of Rs.98,000/- came to be awarded by the Tribunal.

2. In this appeal, Mr.Surya, learned counsel appearing for the appellant confined his arguments to the grant of benefit under the head disability and loss of earnings. According to the learned counsel, even though the appellant in his claim petition, claimed a sum of Rs.75,000/- and Rs.42,000/- respectively, on the above two heads, having regard to the legal position that the Court always grant just compensation depending upon the nature of disablement suffered, which had resulted in the loss of future earnings, the appellant should be awarded the relief of loss of future earnings by applying the multiplier theory as that alone would meet the ends of justice.

3. Mr.D. Bhaskaran, learned counsel appearing for the second respondent on the other hand contended that in the case on hand, the nature of injuries sustained by the appellant cannot be held to be a case where the appellant has lost his avocation once and for all in order to apply the multiplier theory provided under the second schedule to the Motor Vehicles Act. Learned counsel contended that at best, the appellant can only be granted the sum of Rs.42,000/- as claimed by him towards loss of earning capacity instead of Rs.10,000/- granted by the Tribunal.

4. The learned counsel for the appellant in the course of his submissions, relied upon the decisions reported in 2005 (1) CTC 38 (UNITED INDIA INSURANCE COMPANY LTD., VS. VELUCHAMY) and 2003 ACJ 1298 (P. KALAVATHI VS. G. MURALI AND ANOTHER).

5. In support of his submissions, the learned counsel for the second respondent placed reliance upon the decision reported in 2006 (4) CTC 433 (CHOLAN ROADWAYS CORPORATION LTD., VS. AHMED THAMBI) for the proposition that in the event of the loss of earning capacity being assessed by applying the multiplier theory, the appellant will not be entitled to have a separate assessment by way of permanent disability.

6. After hearing the learned counsel for the respective parties and on a perusal of the decision relied upon by the learned counsel for the second respondent reported in 2005(4) CTC 433 (CHOLAN ROADWAYS CORPORATION LTD., VS. AHMED THAMBI) in particular paragraph 19, in the said judgment, it will have to he held that when loss of earning capacity is compensated along with the non-pecuniary losses, there cannot be a separate assessment for payment of compensation under the heading "permanent disability". Paragraph-19 of

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the judgment is to the following effect.

> " 19. In order to avoid any future confusion and to bring more clarity and transparency in the award of damages, it is necessary that the Tribunal, while awarding damages, should itemise the award under each of the head namely, pecuniary losses and non-pecuniary losses. In the non-pecuniary losses the Tribunal shall consider; (a) pain and suffering, (b) loss of amenity, (c) loss of expectation of life, hardship, mental stress, etc., (d) loss of prospect of marriage and under the head pecuniary losses, the Tribunal shall consider loss of earning capacity and loss of future earnings as one component apart from medical and other expenses and loss of earning, if any from the date of accident till the date of trial. When loss of earning capacity is compensated as also the non-pecuniary losses under (a) to (d), permanent disability need not be separately itemised. The reference is answered accordingly. C.M.A. No.231/94 be placed before the single Judge for final disposal in the light of our answer to the reference. (emphasis added)"

7. When the submission of the learned counsel for the appellant based on the Division Bench judgment reported in 2005(1) CTC 38 (UNITED INDIA INSURANCE COMPANY LTD., VS. VELUCHAMY) is considered, the Division Bench has laid down in paragraph-11 as to the principle for applying the multiplier method in the case of the permanent disablement. Paragraph-11 is relevant for the purpose of this case, which reads as under:

> " 11. The following principles emerge from the above discussion:
> (a) In all case of injury or permanent disablement "multiplier method" cannot be mechanically applied to ascertain the future loss of income or earning power.
> (b) It depends upon various factors such as nature and extent of disablement, avocation of the injured and whether it would affect his employment or earning power etc., and if so, to what extent ?
> (c) (1) If there is categorical evidence that because of injury and consequential disability, the injured lost his employment or avocation completely and has to be idle till the rest of his life, in that event loss of income or earning may be ascertained by applying "multiplier method" as provided under Second Schedule to the Motor

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Vehicles Act, 1988.

(2) Even if so there is no need to adopt the same period as that of fatal cases as provided under the Schedule. If there is no amputation and if there is evidence to show that there is likelihood of reduction or improvement in future years, lesser period may be adopted for ascertainment of loss of income.

(d) Mainly it depends upon the avocation or profession or nature of employment being attended by the injured at the time of accident."

8. From a reading of the principle set out in the said paragraph, it can be safely held if there is a categoric evidence that because of the injury and consequential disability, the injured person lost his employment or any other avocation totally and he has to be idle till the rest of his life or if by virtue of such injury, there is likelihood of reduction or improvement in future years, lesser factor of multiplier can be adopted for ascertainment of loss of income. In the case considered by the Division Bench, the injured has suffered a permanent disablement and the relevant paragraph-14 reads as under:

" ....

He came to know that a neurology operation has been done. After thorough examination, he concluded that his right thigh, right leg, right hip lost its value and right leg shortened by 4 cm. than that of the left leg. He also noticed that there is restriction of right knee movement. According to him, it would be difficult for him to sit, stand or attend to the nature's call and there is a possibility of the injury being worsened and also got further damaged in the operated portion. Ultimately, he assessed his disability to the extent of 49 per cent. The disability certificate has been marked as Ex.P8 and X-ray as Ex.P9. In cross-examination, he once again asserted and reiterated the same thing which he deposed in the chief examination. It is clear from the evidence of the injured claimant-P.W.1 and Dr.P.W.2 as well as Exs.P2 to P4, P8 and P9 that the claimant being the van driver, cannot drive the same as he was doing prior to the accident."

9. Similarly, in the other Division Bench decision reported in 2003 ACJ 1298 (P. KALAVATHI VS. G. MURALI AND ANOTHER), the victim

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was 37 years old female tailor by profession, who sustained compound fracture in her right leg. The Division Bench took the view that by virtue of the nature of injury namely, compound fracture of the right leg (tibia) to a person, who is a tailor by profession, it will have to be held that such a permanent disablement would deprive the victim of the chances of continuing the avocation in the future years. So holding, the Division Bench held that the multiplier method will have to be adopted for assessing the loss of earning.

10. In the light of the above principles set down in the in the above referred to Division Bench decisions, when the case on hand is examined, I find that the evidence of P.W.2 based on Exs.P4 and P5 read along with the evidence of P.W.1 himself stating that he is not in a position to continue his avocation subsequent to the accident, it will have to be held that the claim of the appellant merits acceptance. I have also perused Exs.P4 and P5, which disclose that the appellant suffered a severe fracture in his right hip as well as his thigh, which has been set right with the aid of plates and stings and P.W.2 has also certified because of the multiple fracture sustained by the appellant in his right hip and thigh, the movement of the said leg has been restricted to an extent of 20 degrees and that he cannot fold his leg and sit. As far as the injury to the left leg is concerned, here again, the oral and documentary evidence disclose that on the left leg, the appellant had suffered fracture in both the bones, the knee and that after the treatment, there was mal union in the fractured bones. Further, because of the mal union, the left leg said to have been shortened to an extent of 1 cm. Indisputably, the appellant was an auto driver. Having regard to the nature of his avocation viz-a-viz the injuries sustained by him, which has been fully described by the medical evidence both oral and documentary, disability of which has been assessed at 60%, it can be safely concluded that the appellant will not be able to continue his previous avocation as before. Inspite of the injuries having been cured, it may be that the appellant can carry on some other light jobs. It is needless to state that for driving an autorickshaw, the appellant would definitely need strong legs as otherwise it will be difficult for the appellant to handle the autorickshaw, which is a public carrier for carrying passengers. Therefore, the principle set out by the Division Bench decisions reported in 2005(1) CTC 38 (UNITED INDIA INSURANCE COMPANY LTD., VS. VELUCHAMY) as well as the one reported in 2003 ACJ 1298 (P. KALAVATHI VS. G. MURALI AND ANOTHER) squarely applies to the facts of the present case. In the decision reported in 2005(1) CTC 38 (UNITED INDIA INSURANCE COMPANY LTD., VS. VELUCHAMY), the Division Bench has also held in paragraph-20 that it is the settled legal position that if there are materials, it would be open to the Tribunal/Court to grant higher compensation than that of the amount claimed. Therefore, even though the appellant in his claim petition, claimed only a sum of Rs.75,000/- towards permanent disability and another sum of Rs.42,000/- for loss of earning power,

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applying the principle set out in the Full Bench decision reported in 2006(4) CTC 433, paragraph-19, the claim on both heads can be clubbed as one to be assessed for the loss of earning capacity by applying the multiplier method.

11. The appellant was aged 31 years at the time of his accident. As per the findings of the Tribunal, the appellant was earning a sum of Rs.3000/- per month. In the decision reported in 2005 (1) CTC 38, for applying the multiplier method, the Division Bench held that the claimant's scope of engaging himself in some other light job as well as certain amount towards his personal expenses can be taken into account. Following the same, the case on hand even though it can be held that the appellant will not be in a position to carry on his previous avocation of autorickshaw driver, having regard to the fact that the injuries have been healed he can engage himself in some other light job and earn some amount, though not to the full extent to the sum of Rs.3000/-, as said to have been earned by him per month as an autorickshaw driver and since the appellant was 31 years at the time of accident, the multiplier factor can be safely fixed at 10. Having regard to the fact that there is scope for the appellant to earn his livelihood by engaging himself in some other jobs at least 1/3rd of whatever he would have earned can be deducted towards his personal expenses. On that basis, if the compensation towards loss of income is assessed, the same can be assessed as below.

$$\frac{\text{Rs.3000/-}}{\text{Rs.1000/-}} = \frac{2000 \times 12 \times 60 \times 10}{100} = 1,44,000/-$$

12. Accordingly, while setting aside the award of the Tribunal in so far as it relate to the grant of Rs.60,000/- towards permanent disability and a sum of Rs.10,000/- towards loss of future earning, both the above referred claims are clubbed together under the head of loss of earning capacity and assessed at a sum of Rs.1,44,000/- over and above the relief granted on other heads by the Tribunal.

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13. In view of the modification in the compensation awarded towards loss of earning capacity, the second respondent shall deposit the difference with 9% interest from the date of claim, till the date of deposit into the Tribunal. On such deposit being made, the Tribunal shall disburse the same to the appellant with accrued interest. The appeal stands partly allowed.

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Sd/
Asst. Registrar

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Sub Asst.Registrar

To

The Motor Accident Claims Tribunal,
IV Small Cause Court, Chennai
Chennai.

1 CC TO M/S ANAND AND SURYAS, SR 51749

1 CC TO MR.D. BHASKARAN, ADVOCATE SR 51739

CMA.No.1092 of 2001

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